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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,926	05/30/2001	Volker Hilarius	MERCK-2264	5145

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EXAMINER

ANDERSON, REBECCA L

ART UNIT	PAPER NUMBER
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1626

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/866,926	Applicant(s) HILARIUS ET AL.	
	Examiner Rebecca L. Anderson	Art Unit 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16,17 and 20 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-10,15,18,19 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

[Handwritten signature]

DETAILED ACTION

Claims 1-21 are currently pending in the instant application. Claims 16, 17 and 20 appear allowable over the prior art of record. Claims 11-14 are withdrawn from consideration as being for non-elected subject matter. Claims 1-10, 15, 18, 19 and 21 are objected to as containing non-elected subject matter.

Election/Restrictions

As stated in the office action mailed 7 January 2005, the elected invention for search and examination, as determined from the restriction requirement, is the products of claims 1-10 and 15-21 wherein K⁺ is the imidazolium cation, where the R groups are as found in claim 1 and the A⁻ is an anion as found in claim 1.

Applicant argues that the April 2003 office action argues that the groups II and III can be related as product and process of use. However, it is noted that in the office action of January 2005, claims 11-14 were stated as being independent and distinct products from claims 1-10 and 15-21. Specifically, claim 11 is an independent and distinct product, specifically an electrochemical cell comprising a cathode, an anode, a separator and the product of claim 1. Claim 12 is an independent and distinct product, specifically a supercapacitor which comprises at least a pair of electrodes, a separator and the product of claim 1. Claim 13 is an independent and distinct product specifically an electrolyte composition with at least two components of which only one is the product of claim 1. Claim 14 is an independent and distinct product specifically an electrolyte composition with at least two components of which only one is the product of claim 1.

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Applicant also states that the comments in the previous office action regarding *In re Ochiai* are not understood. According to *In re Ochiai* (MPEP 821.04):

Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. See MPEP § 806.05(f) and § 806.05(h). The claims to the nonelected invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 809.02(c) and § 821 through § 821.03. However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

As claims 11-14 are not drawn to processes of using or process of making exclusively to the allowable product, these claims are not rejoinable under *In re Ochiai*.

Finally, applicant requests that the Examiner follow MPEP section 803.02 and examine the entire scope of claim 1. However, it is noted that the election of a specific compound was a further restriction requirement. It is pointed out that the restriction requirement is made under 35 U.S.C. 121. 35 U.S.C. 121 gives the Commissioner (Director) the authority to limit the examination of an application where two or more independent and distinct inventions are claimed to only one invention. The examiner has indicated that more than one independent and distinct invention is claimed in this application and has restricted (limited) claimed subject matter accordingly. Thus the requirement to restrict the claims in this application is predicated on the fact that the claimed subject matter involves more than one independent and distinct invention. Nowhere do applicants argue to the contrary. Nowhere do applicants point out and give reasons why the claims do not involve independent or distinct subject matter. So, here we have claims, which involve more than one independent or distinct invention. Under 35 U.S.C. 121, the claims may be restricted and the examination limited to a restricted invention. There is no argument or evidence to the contrary. Accordingly, restriction as

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has been presented in this application is proper. Claims 1-10, 15, 18 and new claims 19 and 21 still contain non-elected subject matter, as per the restriction requirement and page 3 of the office action mailed 4/21/03 and the office action mailed 11 February 2004, these claims are still objected to as containing non-elected subject matter and are partly withdrawn.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claims 1-10, 15, 18, 19 and 21 are objected to as containing non-elected subject matter. Claims 1-10, 15,, 18, 19 and 21 drawn solely to the elected invention identified in the office action mailed 21 April 2003 and reproduced below would appear allowable over the prior art of record.

The elected invention for search and examination is the products of claims 1-10, 15, 18, 19 and 21 wherein K⁺ is the imidazolium cation, where the R groups are as found in claim 1 and the A⁻ is an anion as found in claim 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571) 272-0696. Mrs. Anderson can normally be reached Monday through Friday 5:30AM to 2:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

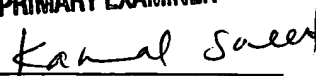
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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6/16/05

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